

FIZ' written submission on women's access to justice for the General Discussion of the CEDAW Committee

FIZ Advocacy and support for migrant women and victims of trafficking is the only specialized centre for victims of trafficking in Switzerland. We will therefore focus our input on the situation of victims of trafficking in women in Switzerland.

Legislation on trafficking in Switzerland:

Switzerland criminalizes trafficking with the purpose of sexual exploitation, labour exploitation and removal of organs. Prescribed penalties – up to 20 years' imprisonment – are commensurate with penalties prescribed for other serious crimes. Penalties for child trafficking and commercial trafficking must be higher (a minimum of one year). The maximum prison sentence ever awarded in Switzerland was 10 years. To date there have only been a few sentences regarding trafficking in Switzerland and most of them very low. All court sentences dealt with trafficking for sexual exploitation, no sentences regarding trafficking for labour exploitation so far in Switzerland.

Situation of victims of trafficking regarding access to justice in Switzerland:

Victims of trafficking can stay for a reflection period of 30 days in Switzerland. During this period they have to decide if they want to cooperate with authorities. If they decide not to cooperate they have to leave the country (more details see 1.2.3). Unfortunately, not all Swiss authorities who come across potential victims of trafficking are sensitized and trained regarding trafficking. In many cases victims of trafficking into sexual exploitation are not identified and therefore criminalized for e.g. illegal prostitution or immediately deported if they don't have a residence permit. Needless to say, not only governmental repression is an issue for not-identified-victims but also repression by the perpetrators. With regard to trafficking for labour exploitation identification by authorities does happen

even less frequently. Law enforcement and migration authorities' focus in Switzerland is on the detection of illegal employment not on exploitation and abuse or victim protection and rights. Furthermore, judicial authorities usually don't consider cases of labour exploitation as trafficking (because of the lack of an official definition of trafficking for labour exploitation in Switzerland and the lack of sensitization) and therefore these victims don't benefit from reflection period and other special rights for victims of trafficking.

The main challenge in the fight against trafficking in Switzerland is the lack of a binding national anti-trafficking strategy and the lack of national standards in victim protection. Switzerland is organized in 26 provincial governments/federal districts (so called cantons) which rule pretty independently. Thus, even though there exists national legislation regarding trafficking and victim's support, it is up to the cantons how they implement these laws and policies. As a result of these differences it means 'good luck' or 'bad luck' in which canton a victim is exploited as victims don't benefit from the necessary protection and the same rights all over Switzerland.

Recently we came across several cases of victims of trafficking who enter Switzerland via the asylum procedure. Even though they mentioned their situation of exploitation and in some cases even indicated that they are victims of trafficking, these victims have not been identified during the asylum procedure (e.g. by interrogation officers) and therefore don't benefit from the special rights and protection for victims of trafficking which exist in Switzerland. One of the reasons is probably that the authorities don't believe the victims and don't contact the existing specialized support service for victims of trafficking as a consequence of the lack of sensitization.

Even more difficult is the situation for victims who have been trafficked abroad (usually in an EU state) then flee to Switzerland and apply for asylum here. As the criminal offence has not taken place in Switzerland, they have no rights here and are sent back to the EU state where they have been exploited and are in danger and from which they have escaped to Switzerland (Dublin-Agreement). As a consequence, some of the victims prefer to leave the legal path and stay undocumented in Switzerland with no or limited access to justice.

Case studies:

Jane from Nigeria

- Jane became pregnant with a young man from another ethnic group even though she was promised to an elder man already
- family punished her, she fled to Benin City
- in Benin she met a Madam, who organized her trip to Italy (passport, visa, plane ticket)
- a man picked her up at the airport and took her to Madam's apt
- at the apt there lived 3 more girls
- Madam told her she had to work for her in order to pay off her debts
- the driver picked her up at the apt and took her to the street where he explained her what kind of work she had to do, no matter that she was pregnant
- Jane cried a lot, couldn't do the work, Madam got very angry
- the other girls told her they had to pay Madam 45'000 Euro
- Jane was afraid that she had to stay there and work for Madam for ever, as nobody told her how much she had to pay
- the next day, Jane was working on the street, a man in a car stopped and asked her why she had to work there being pregnant (4th month)
- the man in the car took her with him and helped her. She stayed at his place for some time
- the man took her to the boarder with Switzerland, payed the train and sent her to Switzerland, where she applied for asylum
- she stayed at an asylum centre but her asylum application had been written off, because she was not in a position to submit travel documents or other papers within 48 hours which would facilitate her identification (difficult if traffickers confiscate her passport)
- after having her first child she got pregnant again, it's not clear who the father of her child is
- after birth, both the mother and the child are not well, she has two small children now, lives in a asylum centre
- now she received her documents, she has to show up at the Federal Office of Migration for clarification of her permission (asylum). She stopped contacts with FIZ.

Faith from Nigeria

- Faith lives in poverty in Nigeria
- When she was very young (a minor) a woman offered her to travel to Europe
- She had to undergo a JuJu oath and swear to pay off 45'000 USD
- She was sent over land to North African coast and ended up in Italy forced to work on the street

- Then she traveled to Switzerland and applied for asylum
- She lived in an asylum centre and was sent to work in many clubs, brothels etc. by the Madam
- the Madam controlled over mobile phone, if she worked enough. She had to pay off a minimum of 1000 CHF a week. If she didn't earn enough, she had to work all night long
- the Madam beat her with her high heels (was also a sex worker) and threatened her with death and the Juju oath
- Faith has worked for years under pressure and has still not payed off all her debts
- Faith is afraid and doesn't want to accuse the perpetrator
- Faith is also afraid of the police, cause they never believe the Nigerian women...
- she has heard of a girl who told her story and because nobody believed her, she was sent back and it is told that she was killed
- now she is married to an elder European man and has a child. Her husband knows the truth and wanted to accuse the Madam.
- Faith was afraid and didn't come back to FIZ

Recommendations for governments:

1. There's a need for international protection obligations and access to justice also for victims who have been trafficked abroad and have no rights as victims of trafficking in Switzerland so far.
2. Authorities (Police, Judiciary, Migration authorities) must receive trainings on trafficking on a regular basis and must be endowed with specialists on trafficking. Also, they must be obligated to collaborate with specialized non-governmental victim support agencies such as FIZ.
3. A national victim protection program and a national strategy for the fight against trafficking which includes prevention, prosecution, victim protection and cooperation and in all cantons binding standards, especially for victim protection!

Conditionality as an obstacle to access to justice and support:

Under the Swiss Victim Support Act (VSA), victims of acts of violence are entitled to aid in certain circumstances. Victims of trafficking are victims in the sense of the law. Therefore they are entitled to obtain medical, psychological, social and material support as well as

legal advice. Services are being offered free of charge. Children benefit from special rights during interrogation, trial etc.

However, there is no right of residence for victims of trafficking in Switzerland but the condition to collaborate with the authorities in order to receive a temporary residence permit and protection and support (as in practice the right of residence is a precondition for protection and support under the VSA). In practice if victims don't agree to collaborate with the authorities, they have to leave the country without being able to claim their rights as victims of trafficking under the Victim Support Act (VSA).

More in detail: Victims of trafficking can stay for a reflection period of 30 days in Switzerland. During this period they have to decide if they want to cooperate with authorities. If they decide not to cooperate they have to leave the country. Victims prepared to testify are granted only temporary residence permits (for the duration of legal proceedings). Thus, there is a danger that victims are instrumentalized for judicial purposes. In the long term, a victim may apply for unconditional admission for humanitarian reasons (in case of personal hardship) . However, there are no national standards but decisions are taken at cantonal (district) level (practice: big differences form canton to canton, hardly any canton uses the possibility of unconditional permits in case of personal hardship). This means there is no legal certainty about unconditional admission for humanitarian reasons in cases of personal hardship.

Case study:

Tamara from Hungary

- Tamara lives with two children and father of children in very difficult economic situation in Hungary (house without heating etc.)
- Tamara has no job and is very sick, her partner (father of children) is a day laborer
- she hopes to be able to finance her house through sexwork
- Tamara travels to Switzerland with a women called Jelena, who told her to help her working as a sexworker in Switzerland
- in Switzerland Jelena becomes violent, takes all her money, forces her to work all night long, without protection (condoms), threatens her with death if she's not willing to do so
- Tamara escapes with the help of two other sexworkers four months later and goes back to Hungary
- Tamara travels to Switzerland for a second time with the help of another women
- She ends up in a similar situation again (trafficking), she hasn't eaten for two days, police picks her up at a brothel and brings her to FIZ

- Tamara doesn't want to testify, she decides to go back to Hungary (where her children are)

Recommendations for governments:

1. Victims of trafficking must have the right of residence – irrespective of the district (canton) where they apply for it and irrespective of their willingness to testify.
2. Regional authorities (Swiss Cantons) should exploit the already existing decision-making powers delegated to them in order to grant residence permits to victims of trafficking.

Close cooperation between criminal justice agencies and victim support agencies to ensure that victims' rights are protected (case study Switzerland):

Close cooperation between authorities (police, judiciary, migration authorities) and non-governmental victim support agencies is key in the fight against trafficking. However, in Switzerland interdisciplinary cooperation only exists in cantons (districts) with cooperation mechanisms (so called Round Tables on trafficking). At present only 14 of the 26 cantons have cooperation mechanisms and only seven of them have mandated FIZ, the only existing specialized victim support centre in Switzerland, for the counseling and support of the victims. In cantons with cooperation mechanisms authorities are better sensitized regarding trafficking. In these Cantons victims of trafficking are identified more often and FIZ is contacted generally for their support and to ensure that they can claim their rights as victims of trafficking.

Recommendations for governments:

1. Governments should advance the collaboration between authorities and non-governmental support services for victims of trafficking such as FIZ. Governments should also obligate ALL regional authorities to do so. Governments have to install an interdisciplinary Round Table against trafficking and have to appoint as a contact person a responsible expert for the trafficking issue.

Conclusions and Recommendations

Ensuring that trafficked persons are not criminalized

1. There's a need for international protection obligations and access to justice also for victims who have been trafficked abroad and have no rights as victims of trafficking in Switzerland so far.
2. Authorities (Police, Judiciary, Migration authorities) must receive trainings on trafficking on a regular basis and must be endowed with specialists on trafficking. Also, they must be obligated to collaborate with specialized non-governmental victim support agencies such as FIZ.
3. A national victim protection program and a national strategy for the fight against trafficking which includes prevention, prosecution, victim protection and cooperation and in all cantons binding standards, especially for victim protection!

Facilitating the safe and productive involvement of victims in prosecutions

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2. Regional authorities (Swiss Cantons) should exploit the already existing decision-making powers delegated to them in order to grant residence permits to victims of trafficking.

Promoting cooperation between criminal justice and victim support agencies

1. Governments should advance the collaboration between authorities and non-governmental support services for victims of trafficking such as FIZ. Governments should also obligate ALL regional authorities to do so. Governments have to install an interdisciplinary Round Table against trafficking and have to appoint as a contact person a responsible expert for the trafficking issue.